

**Letter of Findings: 08-0654
International Fuel Tax
For the Years 2006 and 2007**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. International Fuel Tax Agreement – Assessment.

Authority: IC § 6-6-4.1-24; IC § 6-8.1-3-14; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IFTA Articles of Agreement, R1210.300 (1998, revised 2007); IFTA Procedures Manual, P540, 550 (1996).

Taxpayer protests the imposition of IFTA assessments for 2006 and 2007.

II. Tax Administration – Negligence Penalty.

Authority: IC § 6-6-4.1-23; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

For the years at issue Taxpayer transported liquid food grade product and was permanently leased to another transport company ("Transport Co."). When Taxpayer first leased on with Transport Co., Taxpayer was operating under Transport Co.'s IFTA fuel tax permit. However, around the middle of 2006, Taxpayer obtained its own IFTA credentials. Taxpayer did not file any IFTA returns after the fourth quarter of 2006.

The Indiana Department of Revenue ("Department") conducted an IFTA audit of Taxpayer. Because Taxpayer was initially unavailable, the audit was conducted on a "best information available" basis. The Department issued proposed assessments for fuel tax imposed under the International Fuel Tax Agreement ("IFTA") for the tax years 2006 and 2007 along with penalty and interest. Taxpayer protested the assessment and negligence penalty.

Subsequent to protest, Taxpayer sent the Department some fuel invoices and a supplemental audit was conducted reducing the original audit assessment. Per Taxpayer's request the original invoices were sent back to him in order to prepare for the hearing. An administrative hearing was held at which time Taxpayer requested a copy of the supplemental audit which was subsequently mailed to him. Taxpayer was asked to review the supplemental audit and communicate any remaining protest issues to the Department (Taxpayer had indicated it was awaiting the close of a bankruptcy that included either one or both audited years in order to retrieve the invoices). Taxpayer was afforded ample time to respond, and has not. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. International Fuel Tax Agreement – Assessment.

DISCUSSION

Taxpayer generally protests the imposition of additional IFTA taxes for the tax years 2006 and 2007, which the Department assessed under the authority of IC § 6-6-4.1-24(a).

IFTA (International Fuel Tax Association) is an agreement between various United States jurisdictions and Canada allowing for the equitable apportionment of motor fuel taxes. The agreement's goal is to simplify the tax, licensing, and reporting requirements of interstate motor carriers such as Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority granted under IC § 6-8.1-3-14.

IFTA Articles of Agreement, R1210.300 (1998, revised 2007) provides the standard for determining whether a proposed assessment may successfully be challenged by the licensee. "The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case where the validity of the assessment is questioned, the burden shall be on the licensee to establish by a fair preponderance of the evidence that the assessment is erroneous or excessive." *Id.*

It is the taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases. As set out in IC § 6-8.1-5-4(a):

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks. See also IFTA Procedures Manual, P540, 550 (1996).

The Department's proposed assessment of additional fuel tax, under IC § 6-6-4.1-24(b), is deemed to be "prima facie evidence that the department's claim for the unpaid tax is valid." That same section of the Indiana Code goes on to state that "the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." As noted above, IFTA Articles of Agreement, R1210.300 (1998, revised 2007), provides in part that, "[T]he burden shall be on the licensee to establish by a fair preponderance of the evidence that the assessment is erroneous or excessive." (Emphasis added).

The Department rated Taxpayer's IFTA mileage records as inadequate. The Department's audit made four IFTA adjustments:

- (1) Audited Total Miles - For each non-filing quarter in 2007, audited total miles were calculated based on the average determined from the three quarters filed for 2006. No adjustment was made to 2006 total miles, because no source documents were presented for audit.
- (2) Audited Jurisdiction Miles - For each non-filing quarter in 2007, audited jurisdiction miles were calculated based on an average miles determined from the three quarters filed for 2006. Again no adjustment was made for 2006 jurisdiction miles for 2006, because no source documents were presented for audit.
- (3) Audited Total Gallons - No fuel source documents such as retail truck stop/service station invoices were submitted for audit. Therefore, in each quarter of the audit period, audited total gallons were calculated by dividing audited total miles by the statutory 4 mpg as outlined in the IFTA Audit Manual Section A550.100.
- (4) Audited Jurisdiction Tax Paid Gallons - Again, because no fuel source documents were presented for audit, no tax paid credit was allowed in the audit. Any reported tax paid gallons reported by Taxpayer for 2006 were reduced to zero in the audit.

As indicated in the "Summary of Facts," subsequent to the Department's audit and Taxpayer's protest of the audit, Taxpayer submitted to the Department retail truck stop/gas station fuel invoices. Taxpayer also presented quarterly summary mileage/fuel summaries for both 2006 and 2007 that were prepared subsequent to the audit. It appeared that Taxpayer calculated its summary quarterly gallons by adding up the invoices. It also appeared that Taxpayer calculated quarterly miles by multiplying the jurisdiction fuel invoices by 6 mpg. No mileage source documents were provided.

The Department's supplemental audit reviewed the invoices. Because Taxpayer did not submit mileage source documents, the Department could not verify that all fuel invoices had been submitted. Therefore, the supplemental audit revised the total and jurisdiction miles by accepting the original audit's miles and adding in routed miles for jurisdictions not represented on the original audit (based on the invoices submitted and routing Taxpayer's vehicle from its home base to fuel stops). Because Taxpayer did not present source documentation for mileage, the resulting miles were divided by the statutory 4 mpg to yield the supplemental audit's total gallons. As for the tax paid gallons, Taxpayer was given credit for the taxes that were paid per the fuel invoices that were supplied subsequent to the original audit.

As a result, the Department's supplemental audit made minor adjustments to the 2006 IFTA assessment, and more significant adjustments to the 2007 IFTA assessment. Given Taxpayer's silence as to the supplemental audit and the resulting reduced IFTA assessments for 2006 and 2007, it is presumed that either Taxpayer was satisfied with the results of the supplemental audit once he had the opportunity to review it, or Taxpayer's bankruptcy proceedings silenced Taxpayer's protest concerns. In either case, Taxpayer has not "established by a fair preponderance of the evidence that the assessment is erroneous or excessive." IFTA Articles of Agreement, R1210.300 (1998).

The Department's original audit and subsequent adjustments in the supplemental audit are reasonable and supported by law and IFTA Audit Manual procedures.

FINDING

Taxpayer's protest is respectfully denied. The Department's supplemental audit results stand.

II. Tax Administration—Negligence Penalty.

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty.

The Department refers to IC § 6-6-4.1-23, which states:

(a) If a person:

- (1) fails to file a return for the tax due under this chapter on or by the due date for the return;
- (2) fails to pay the full amount of tax shown on the person's return on or by the due date for the payment; or
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;

the person is subject to a penalty.

(b) The penalty for a failure described in subsection (a) is the penalty calculated under the penalty provisions of the International Fuel Tax Agreement entered into by the department under [IC 6-8.1-3-14](#).

The Department refers to [45 IAC 15-11-2](#)(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

[45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively

establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-6-4.1-23. Taxpayer has not affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#). Taxpayer should have maintained better records.

FINDING

Taxpayer's protest is respectfully denied.

CONCLUSION

Taxpayer's protest of the IFTA assessments is denied. The assessments resulting from the Department's supplemental audit stand.

Taxpayer's protest of the negligence penalty is also denied.

Posted: 10/28/2009 by Legislative Services Agency

An [html](#) version of this document.